

9

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No.972 of 1988.

Dated: 20-10-93

H.C. Om Prakash .....Applicant.

Versus

of  
The Commissioner/ Police & another Respondents.

CORAM:

Hon'ble Mr.C.J.Roy, Member(J)

Hon'ble Mr.S.R.Adige, Member(A)

For the applicant: Shri V.C.Sondhi, Counsel.

For the respondents: Shri Pawan Behl, Counsel.

J U D G M E N T

(By Hon'ble Mr.S.R.Adige, Member(A).)

In this application, Shri Om Prakash, Head Constable 2113, III Bn,DAP, New Police line has prayed for quashing of the show cause notice (Annexure-A) dated 10.5.88/against dismissal and has further prayed that the departmental enquiry against him be kept pending till the decision of the criminal case on all egedly the same cause of action, which is pending trial.

2. Shortly stated, the applicant alongwith a Sub-Inspector of Police and otherfunctionaries were detailed/<sup>to</sup> guard one Vinod Kumar Aneja- a COFEPOSA detenue who was admitted to LNJP Hospital for treatment On 9.11.83, the detenue was allegedly taken out of the hospital premises by the applicant and the Constable on guard duty for urine examination. At 11 p.m. that night, the detenue along with the police personnel of the guard unauthorisedly went to the residence of Shri G.K.Dutta, Intelligence Officer, Directorate of Revenue Intelligence where the detenue not only allegedly abused Shri Dutta and threatned to kidnap his daughter, but also to kidnap the daughter of Shri G.S.Mingi, Deputy Director, Directorate of Revenue Intelligence. The detenue was brought back by the guard at about 12 in the mid-

10

night. It was alleged that when the detainee was taken out for urine examination and was brought back by the guard, the applicant was present. On the basis of these allegations, a FIR No.43 dated 15.1.83 under sec.506/114 IPC was registered at Kalkaji Police Station (Annexure-B). Although in the FIR, the applicant's name is not specifically mentioned, the respondents in their counter affidavit have averred that during identification parade the applicant was identified by Shri Dutta. The applicant was placed under suspension and a joint departmental enquiry was initiated against <sup>the another</sup> S.I./Head Constable as well as the applicant. The departmental enquiry against the <sup>the other</sup> Sub-Inspector and Head Constable has already been disposed of but the department enquiry against the applicant was kept in abeyance as the criminal case was pending on the same charge. Thereafter, in pursuance of the departmental instructions received from the Police Head Quarters for instituting department proceedings simultaneously, the departmental enquiry was again taken up from where it was left off. The Enquiry Officer completed the departmental enquiry and submitted his findings in which he concluded that the charge (Annexure-C) against the applicant was proved. Tentatively agreeing with the findings of the Enquiry Officer, the Deputy Commissioner of Police, III Bn, DAP, New Delhi by the impugned order dated 10.5.88 called upon the applicant to show cause why he should not be dismissed from service and why the period of his suspension from 11.1.83 to the date of issue of final orders be not treated as period not spent on duty. It is at that stage that the applicant came to this Tribunal and obtained an order for maintenance of status quo dated 27.5.88, which

is still in force.

3. On 8.10.93, we have heard Shri V.C.Sondhi, learned counsel for the applicant as well as Shri Pawan Bahl, learned counsel for the respondents. On that date, the counsel for the applicant sought time to produce certain rulings. Both the counsel were directed to ascertain the position regarding the status of the criminal case pending against the applicant. A week's time was given failing which it was ordered that the case would be decided on the basis of material available on record. Till date neither the citations relied upon the applicant have been produced nor has the status of criminal case pending against the applicant been furnished to this Tribunal. Accordingly, the case is being decided on the basis of materials available on record.

4. Shri V.C.Sondhi, learned counsel for the applicant has contended that the relief prayed for should be granted on the ground that after the enquiry was resumed, the Enquiry Officer did not recall the witnesses and thus the applicant was denied the opportunity to examine them, resulting in denial of natural justice. He has also contended that as the criminal case is still pending against him, further action in the departmental proceedings would be tantamount to compelling the applicant to disclose his defence and thus prejudice him adversely in the criminal case.

5. In our view, no good grounds have been made out to quash the impugned order dated 10.5.88 at this stage. By the impugned order dated 10.5.88, the applicant has been directed to show cause against the action proposed to be taken and while showing cause

cause it is always open to him to take the plea that he has taken before this Tribunal regarding denial of opportunity to cross-examine the P.Ws., which no doubt the disciplinary authority will carefully examine before passing the orders. Even thereafter/<sup>a</sup> statutory remedy by way of appeal against the disciplinary authority's order is available to the applicant, and even if thereafter any grievance survives, it is open to the applicant to file a fresh O.A. before this Tribunal. The claim that further action in the departmental enquiry will prejudice his defence in the criminal case, is <sup>also</sup> not tenable because the departmental enquiry has already reached the stage of issue of show cause notice based upon the Enquiry Officer's findings. In this connection, the law is well established that there is no bar to holding disciplinary proceedings for <sup>merely</sup> mis-conduct/because in respect of the same conduct, the person concerned is also being prosecuted in a criminal Court. In Kusheshwar Dubey Vs. Bharat Coaking Coal Ltd. (AIR 1988 SC 2118), the Hon'ble Supreme Court has held that "it is neither possible nor advisable to evolve a hard and fast straight jacket formula valid for all cases and of general application without regard to the particularities of the individual situation." The same principle of law has been enunciated by the Hon'ble Supreme Court in the case of "Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan" (AIR 1960SC 806).

6. Under the circumstances, we see no good ground to interfere in the matter at this stage and this application is accordingly dismissed. The orders for maintenance of the status quo dated

-5-

27.5.88 are withdrawn.

7. No costs.

*S. R. Adige*  
(S.R.ADIGE)  
MEMBER(A)

*C. J. Roy*  
(C.J.ROY)  
MEMBER(J)  
*20/10/93*

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